

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN RE:	
MATTHEW KELLY DAVENA J. WILEY ADAMS 5214 Kerley Road, Unit A3 Durham, NC 27705 SSN: xxx-xx-9789 SSN: xxx-xx-8405 Debtor(s).	Case No. 11-80992 Chapter: 13

**AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY  
OR FOR ADEQUATE PROTECTION**

Comes now RKR, Inc. t/a Northside Auto Sales (“Northside”), by and through counsel, and files this Amended Motion for Relief from Automatic Stay, and in support of this Amended Motion states and shows unto the Court that:

1. On February 12, 2011, Matthew Kelly (“Kelly”) purchased a **2002 Chevrolet Trailblazer VIN 1GNDT13S922184512** (“Vehicle”) from Northside, said transaction being financed by Northside. A copy of said Retail Installment Contract (“Contract”) is attached hereto as “Exhibit A” and incorporated by reference.

2. To secure the purchase, Kelly granted to Northside a security interest in the Vehicle; Northside holds a validly perfected, first priority purchase-money security interest in the Vehicle, as noted on the Certificate of Title. A copy of the Title is attached hereto as “Exhibit B” and incorporated by reference.

3. Kelly made a down payment of \$3,000.00, using two credit cards, making charges of \$2,500.00 on one card, and \$500.00 on the other.

4. On June 15, 2011, Northside was notified that the \$2,500.00 charge was charged back on the grounds that Kelly allegedly used Debtor Adams’ credit card without her permission.

5. Prior to filing bankruptcy, Kelly was in default for failure to make weekly payments.

6. The Vehicle was reclaimed by Northside prior to the bankruptcy filing and Northside is in possession of the Vehicle.

7. This bankruptcy case commenced on June 21, 2011 ("Petition Date"). On the Petition Date, the payoff amount due under the Contract was \$16,479.24.

8. On the Petition Date, the NADA the retail value of the Vehicle was \$8,325.00 and the Debtors have listed the value of the vehicle as \$7,627.00.

9. The value of the Vehicle is depreciating through use and time and the debtor has no equity in the vehicle.

10. The Vehicle is not necessary for an effective reorganization and if Northside is required to return the Vehicle to the Debtor it will not be adequately protected.

11. Pursuant to 11 U.S.C. § 362(d)(1), sufficient cause exists, including lack of adequate protection, for terminating the automatic stay as to Northside, the Vehicle and the proceeds thereof.

WHEREFORE, the above premises considered, Northside prays that:

1. Northside be granted relief from the automatic stay provisions of 11 U.S.C. § 362 in order that it may proceed immediately with any and all other remedies available pursuant to U.S.C. § 362 under state or federal law that are not inconsistent with Title 11 of the United States Code.

2. The provisions of Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure be waived.

3. That Northside be allowed a general unsecured claim for any outstanding deficiency balance remaining after the sale of disposition of the Vehicle.

4. The in the alternative to Relief from Stay, that Northside be afforded adequate protection of its interest in the Vehicle, including adequate protection payments and proof of continuing insurance coverage on the Vehicle naming Northside as the loss payee.

5. Northside be granted such other and further relief to which it may be entitled, including reasonable attorneys' fees.

Respectfully submitted,

/s/ James W. Sprouse, Jr.

James W. Sprouse, Jr. (NC Bar No. 26767)

Attorney for RKR, Inc. T/A Northside Auto Sales

3109 Poplarwood Court, Suite 115

Raleigh, NC 27604

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Email: [jsprouse@sprousekurtzlaw.com](mailto:jsprouse@sprousekurtzlaw.com)

# RETAIL INSTALLMENT SALES CONTRACT

<b>Purchaser — Name &amp; Address (Include County &amp; Zip Code)</b> <b>Mathew Kelly</b> <b>7495 Princess Carol Ct. # 7</b> <b>MANASSAS VA 20111</b> <b>(703)682-8866 (703)413-7112</b>	<b>Co-Purchaser — Name &amp; Address (Include County &amp; Zip Code)</b> 	<b>Creditor (Seller Name and Address)</b> <b>RKR Inc. T/A</b> <b>NORTHSIDE AUTO SALES</b> <b>9000 Centreville Road</b> <b>Manassas, VA 20110-5202</b> <b>Local: (703) 368-5666</b> <b>Metro: (703) 631-9393</b> <b>www.northsideauto.com</b>
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You, the Purchaser (and Co-Purchaser, if any), may buy the vehicle described below for cash or on credit. The sales price is shown below as "Sale Price". The credit price is shown below as "Total Sale Price". By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract.

**Description of Vehicle.** You agree to buy and the Creditor agrees to sell the following vehicle.

Year	Make and Model	Body Type	Vehicle Identification No.	Color	Mileage
2002	Chevrolet TrailBlazer	SPORT UTILITY	1GNDT13S922184512	Onyx Black	116674

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your downpayment of
24.43% % E	\$ 3,717.02 E	\$ 9,576.22	\$ 13,293.24 E	\$ 16,293.24 E

**Your Payment Schedule Will Be:**

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	WHEN PAYMENTS ARE DUE	DEFERRED DOWNS
147	\$90.00	Weekly BEGINNING 02/18/2011	
		BEGINNING	
1	\$63.24	FINAL PMT DUE ON 12/13/2013	

**Late charge.** If any payment is not paid in full within 7 days after it is due, you will be charged a late fee which shall be the greater of \$10 or 5% of the past due amount.

**Prepayment.** If you pay off all your debt early, you will not have to pay a penalty and you may be entitled to a refund of part of the finance charge. See PREPAYMENT REFUND on back.

**Security Interest.** You are giving a security interest in the vehicle being purchased.

**E = Estimates.** If the finance charge applicable to this contract is computed on the declining balance, the "Finance Charge" and "Total of Payments" disclosed above are estimates, as are the amount of payments disclosed. These amounts have been computed on the assumption that all payments will be received on their scheduled due dates.

**Additional Information.** See the other side of this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date, prepayment refunds and security interest.

## ITEMIZATION OF AMOUNT FINANCED

- Sale Price \$ 11,950.00 (1)
- Total Down payment + Net Trade-in \$ 0.00 + Cash Down payment \$ 3,000.00  
Your Trade-in is a \_\_\_\_\_ \$ 3,000.00 (2)  
Year Make Model
- Unpaid Balance of Sale Price (1 minus 2) \$ 8,950.00 (3)
- Other Charges Including Amounts Paid to Others on Your Behalf:
  - Taxes Not Included in Sale Price \$ 364.47
  - Government License and/or Registration Fees (Itemize) \$ 42.75
  - Government Certificate of Title Fees \$ 10.00
  - On-Line Systems Filing Fee \$ 10.00
- TOTAL Fees paid to Government Agencies (A+B+C+D) \$ 427.22 (4)
- Processing Fee paid to Northside Auto Sales \$ 199.00 (5)
- Amount Financed — Unpaid Balance (amount of credit you will get) (3+4+5) \$ 9,576.22 (6)

**- NO LIABILITY INSURANCE INCLUDED -**

**CREDIT AUTHORIZATION.** You authorize us to investigate your credit records, verify your employment and current address information at any time prior to receipt of payment in full under this Contract.  
**PROMISE TO PAY.** You agree to pay us the amount shown as "Total of Payments" in accordance with the payment schedule attached hereto. This amount is payable in consecutive installment payments commencing on the first due date shown above and continuing periodically as attached hereto until fully paid.

I (we) waive the benefit of my (our) Homestead Exemption as to the vehicle described above.

You signed this contract and received a copy 02/12/2011  
 Purchaser (Signature) Mathew Kelly

**Co-Purchasers —** A Co-Purchaser is a person who is responsible for paying the entire debt. The Co-Purchaser knows that the Creditor has a security interest in the vehicle and consents to the security interest.

Co-Purchaser (Signature) \_\_\_\_\_  
 Creditor Signs RKR Inc. T/A NORTHSIDE AUTO SALES By [Signature] Title [Signature]

**CONDITION PRECEDENT.** As a condition precedent to my being granted this Retail Installment Sales Agreement I hereby grant the exclusive and irrevocable authority to you or your agent to represent me at the Division of Motor Vehicles in my State of residence for the purpose of transfer of title and registration of this vehicle. I agree to sign the application for certificate of title and registration in your office and to provide you with the required vehicle inspections and insurance binders as may be required by my State of residence within 21 days from the date of this Contract, and you agree to transfer title to my name within 30 days from the date of this Contract. I irrevocably agree, as a condition precedent to my being approved under this Retail Installment Sales Contract, to waive my rights to possession of all title documents to this vehicle until this Contract is paid in full.

# COMMONWEALTH OF VIRGINIA

## DEPARTMENT OF MOTOR VEHICLES

### CERTIFICATE OF TITLE FOR A VEHICLE

KEEP IN SAFE PLACE - ANY ALTERATION OR ERASURE VOIDS THIS TITLE

THE DEPARTMENT OF MOTOR VEHICLES, COMMONWEALTH OF VIRGINIA, HEREBY CERTIFIES THAT AN APPLICATION FOR A CERTIFICATE OF TITLE HAS BEEN MADE FOR THE VEHICLE DESCRIBED HEREON PURSUANT TO THE PROVISIONS OF THE MOTOR VEHICLE LAWS OF THIS COMMONWEALTH, THAT THE APPLICANT NAMED ON THE FACE HEREON HAS BEEN DULY RECORDED AS THE LAWFUL OWNER OF SAID VEHICLE, AND THAT, FROM THE STATEMENTS OF THE OWNER AND THE RECORDS ON FILE WITH THIS DEPARTMENT, THE HEREON DESCRIBED VEHICLE IS SUBJECT TO THE SECURITY INTEREST RECORDS ON FILE WITH THIS DEPARTMENT, AND AS DESCRIBED HEREON, IF ANY, THE MOTOR VEHICLE LAWS OF THIS COMMONWEALTH ALSO PROVIDE THAT ALL TITLE AND REGISTRATION INFORMATION IN THE OFFICE OF THE DEPARTMENT OF MOTOR VEHICLES IS PRIVILEGED AND ONLY SUBJECT TO DISSEMINATION TO AUTHORIZED AGENCIES, BUSINESS ORGANIZATIONS OR AGENTS, GOVERNMENTAL ENTITIES AND INDIVIDUALS UNDER THE CONDITIONS SPECIFIED BY MOTOR VEHICLE CODE SECTIONS 46.2-208, 46.2-209 AND 46.2-210.

ESTABLISHED 07/15/11 627 062711 ORIGINAL

VEHICLE IDENTIFICATION NO. 1GNDDT35922184512		YEAR 2002	MAKE CHEVROLET	VEHICLE BODY SPORT UTILITY	TITLE NO. 542452225
EMPTY WGT. 4628	GROSS WGT.	GVWR	GCWR	AXLES 2	FUEL GAS
SALES TAX PAID VA EXEMPT			ODOMETER 121472	DATE ISSUED 07/15/11	
OTHER PERTINENT DATA IND			ODOMETER BRAND ACTUAL	PRIOR TITLE NO. 61477075	

Lienholder name(s) and address(es):  
**NORTHSIDE AUTO SALES**  
**9000 CENTREVILLE ROAD**  
**MANASSAS VA 20110**

THIS IS NOT A TITLE NUMBER

G23077431

LIEN RELEASE	INTEREST IN THE ABOVE DESCRIBED VEHICLE IS HEREBY RELEASED	
	By _____	_____
	TITLE	DATE

Name(s) and address(es) of vehicle owners:  
**KELLY, MATTHEW**  
**7495 PRINCESS CAROL COURT UNIT 7**  
**MANASSAS VA 20111-1710**



**A** Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment. The undersigned hereby certifies that the vehicle described in this title has been transferred to the following (printed name and address of Buyer(s)).

Buyer(s) Name _____	
Street _____	City, State, Zip _____
DATE OF SALE _____ SALE PRICE _____	
ODOMETER READING (No Test) _____	I certify to the best of my knowledge that the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked:
	<input type="checkbox"/> 1. The mileage stated is in excess of its mechanical limits. <input type="checkbox"/> 2. The odometer reading is not the actual mileage. <span style="float: right;">WARNING-ODOMETER DISCREPANCY.</span>
Signature of Seller(s) _____	Printed Name of Seller(s) _____
Signature of Buyer(s) _____	Printed Name of Buyer(s) _____
I am aware of the above odometer certification made by the Seller(s) _____	
I am aware of the above odometer certification made by the Seller(s) _____	
8 DETACH HERE 8	
Dealer's No. _____	Licensing Jurisdiction _____

**NORTHSIDE AUTO SALES**  
**9000 CENTREVILLE ROAD**  
**MANASSAS VA 20110**



UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN RE:

MATTHEW KELLY  
DAVENA J. WILEY ADAMS  
5214 Kerley Road, Unit A3  
Durham, NC 27705  
SSN: xxx-xx-9789  
SSN: xxx-xx-8405

Debtor(s).

Case No. 11-80992

Chapter: 13

**CERTIFICATE OF SERVICE**

**THIS IS TO CERTIFY** that on the below date, the undersigned served a copy of the Amended Motion for Relief from the Automatic Stay by depositing the same, enclosed in a postpaid wrapper, properly addressed to the following parties in interest, at their last known addresses as shown below, in a post office or official depository under the exclusive care and custody of the United States Postal Service:

John T. Orcutt  
Debtors' Attorney  
6616-203 Six Forks Road  
Raleigh, NC 27615

Richard M. Hutson, II  
Chapter 13 Trustee  
P. O. Box 3613  
Durham, NC 27702

Matthew Kelly and  
Davena J. Wiley Adams  
5214 Kerley Road, Unit A3  
Durham, NC 27705

THIS the 27<sup>th</sup> day of July, 2010.

/s/ James W. Sprouse, Jr.  
James W. Sprouse, Jr. (NC Bar No. 26767)  
Attorney for RKR, Inc.,  
T/A Northside Auto Sales  
3109 Poplarwood Court, Suite 115  
Raleigh, NC 27604  
Telephone: (919) 954-1900  
Email: [jsprouse@sprousekurtzlaw.com](mailto:jsprouse@sprousekurtzlaw.com)